

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Edwin A Groover,

10 Plaintiff,

11 v.

12 Douglas Ducey, et al.,

13 Defendants.
14

No. CV-20-00107-TUC-LAB

ORDER

15 This order has been prepared for the signature of the designee of the Chief United
16 States District Judge pursuant to General Order 18-20.

17 On March 3, 2020, the plaintiff commenced the pending action by filing a
18 complaint in this court. (Doc. 1.) On April 3, 2020, the defendants Pima County and the
19 Honorable Chris T. Holguin filed a motion to dismiss for failure to state a claim. (Doc.
20 7) The plaintiff filed a response on April 13, 2020 in which he moves that the court
21 dismiss his complaint without prejudice. (Doc. 8.) The plaintiff explains that he has been
22 experiencing transportation difficulties due to the corona virus pandemic. (Doc. 8.) In
23 their reply, the defendants argue that the dismissal should be with prejudice because the
24 plaintiff failed to state a claim upon which relief may be granted. (Doc. 9.) The Court
25 construes the plaintiff's response (Doc. 8) as a motion to dismiss pursuant to
26 Fed.R.Civ.P. 41(a)(1).

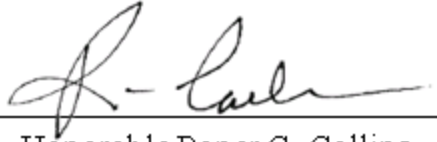
27 Excepting special circumstances not present here, Rule 41(a)(1)(A) provides that
28 "the plaintiff may dismiss an action without a court order by filing . . . a notice of

1 dismissal before the opposing party serves either an answer or a motion for summary
2 judgment.” Fed.R.Civ.P. “Unless the notice or stipulation states otherwise, the dismissal
3 is without prejudice.” Fed.R.Civ.P. 41(a)(1)(B).

4 None of the defendants has filed either an answer or a motion for summary
5 judgment. The defendants Pima County and the Honorable Chris T. Holguin filed a
6 motion to dismiss for failure to state a claim, but that motion does not contain matter
7 outside of the pleadings and cannot qualify as a motion for summary judgment pursuant
8 to Rule 12(d). (Doc. 7.) Accordingly,

9
10 IT IS ORDERED that the Clerk is instructed to treat the plaintiff’s filing at Doc. 8
11 as a notice of voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(A). Dismissal is
12 without prejudice. The Clerk is instructed to close this case.

13 Dated this 23rd day of April, 2020.

14
15
16
17 
18 Honorable Raner C. Collins
19 Senior United States District Judge
20
21
22
23
24
25
26
27
28